

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.E.A. No.19 of 2007
Date of Decision:26.03.2007**

**M/s Yamuna Bardana Traders Behind Police Station, Industrial
Area, Yamuna Nagar**

.....Appellant

Vs.

Commissioner Central Excise, Panchkula

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL**

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Present:- Mr. Arun Bansal, Advocate for the appellant.

Ms. Daya Chaudhary, Assistant Solicitor General of India
for the respondent.

M.M.Kumar, J.

This appeal filed under Section 35-G of the Central Excise Act, 1944 is directed against order dated 30.11.2005 (Annexure A.3) and order dated 17.11.2006 (Annexure A.5) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal).

The petitioner has filed the appeal before the Tribunal and he was not able to appear resulting in passing of order dated 30.11.2005 (Annexure A.3). Thereafter, the petitioner filed an application on 21.3.2006 seeking the relief of restoration of appeal and decide the same after granting opportunity of hearing to the appellant. The application has been dismissed by the Tribunal holding that Rule 20 of the CEGAT (Procedure) Rules, 1982 (for short, 'the Rules') did not apply to the case of a respondent because only expression appellant has been used in the rule.

We have heard learned counsel for the parties and find that the rule has now been interpreted by the Supreme Court in the case of **J.K.Synthetics Ltd. v. Collector of Central Excise**, (1996) 6 SCC 92 by

holding that the expression appellant used in Rule 20 of the Rules would also include the respondent. In that regard, reference may be made to para 5 and 6 of the judgment in **J.K.Synthetic's case (supra)**, which reads as under:-

- “5. Rule 20 of the CEGAT (Procedure) Rules deals with cases where the appellant has defaulted. Rule 21 empowers CEGAT to hear appeals ex parte. The fact that Rule 21 does not expressly state that an order on an appeal heard and disposed of ex parte can be set aside on sufficient cause for the absence of the respondent being shown does not mean the CEGAT has no power to do so. Rule 41 gives CEGAT wide powers to make such orders or give such directions as might be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or, most importantly, to secure the ends of justice.
6. If, in a given case, it is established that the respondent was unable to appear before it for no fault of his own, the ends of justice would clearly require that the ex parte order against him should be set aside. Not to do so on the ground of lack of power would be manifest injustice. Quite apart from the inherent power that every tribunal and court constituted to do justice has in this respect, CEGAT is clothed with express power under Rule 41 to make such order as is necessary to secure the ends of justice. CEGAT has, therefore, the power to set aside an order passed ex parte against the respondent before if it is found that the respondent had, for sufficient cause, been unable to appear.”

In view of the above, it is clear that the operation of Rule 20 of the Rules could not be confined only to the appellant and the application of the appellant herein was maintainable before the Tribunal. Accordingly, we set aside the order dated 17.11.2006 rejecting the application of the appellant and issue direction to the Tribunal to entertain the application and decide the same on merit. The needful shall be done expeditiously

preferably within a period of four months from the date of receipt of copy of this order.

**(M.M.KUMAR)
JUDGE**

**March 26, 2007
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**(RAJESH BINDAL)
JUDGE**